

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-2, 5-6, 9 and 12-14 are pending in the application. Claims 1-2, 6 and 12 are amended by the present amendment. Support for the amended claims can be found at least at p. 11, l. 11 – p. 12, l. 31. No new matter is presented.

In the Office Action, Claims 1-2, 5-6, 9 and 12-14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hayama et al. (U.S. Pat. 7,006,484, herein Hayama) in view of Davidson et al. (U.S. Pat. 6,483,820, herein Davidson).

As an initial matter, Applicants appreciatively acknowledge the courtesy extended by Examiner Safaipour in holding an interview with the undersigned on September 17, 2009. During the interview, proposed claim amendments were discussed that Examiner Safaipour indicated appear to overcome the prior art. In response, Claims 1-2, 6 and 12 are amended to incorporate the proposed amendments discussed during the interview. The undersigned also appreciatively acknowledges Examiner Safaipour's indication that this amendment would be entered under 37 C.F.R. § 1.116.

As discussed during the interview, Claim 1 is amended to recite a mobile communication system comprising:

a holding unit configured to hold layered data and a corresponding radio resource amount *indicating at least one of a number of channels, a number of multiplexed codes or a transmission power required for transmitting the layered data;*

a determination unit configured to *compare area resource information indicating at least one of an available number of channels, an available number of multiplexed codes or an available transmission power* for respective radio areas covered by base stations *with the radio resource amount held in the holding unit for each of a plurality of layers of the layered data*, and to determine, from layered data of a highest layer, at least one layered data of which the radio resource held in the holding unit satisfies the area resource information ...

Independent Claims 2, 6 and 12, while directed to alternative embodiments, are similarly amended. Accordingly, the remarks and arguments presented below are applicable to each of independent Claims 1, 2, 6 and 12.

In the previous response, arguments were presented that Hayama, even if combined with Davidson, fails to teach or suggest “hold[ing] layered data and a corresponding radio resource amount indicating at least one of a number of channels ... required for transmitting the layered data” and “compar[ing] area resource information indicating at least one of an available number of channels ... for respective radio areas covered by base stations with the radio resource amount held in the holding unit” and “determin[ing], from layered data of a highest layer, at least one layered data of which the radio resource held in the holding unit satisfies the area resource information” as recited in amended independent Claim 1.

In rebutting these previously presented arguments, pp. 2-3 of the Office Action again appears to rely on Fig. 4 and col. 6, ll. 39-55 of Davidson, which describes the use of resource restriction flags to indicate whether additional resources (e.g. a traffic channel) may be allocated to a mobile station. A resource restriction flag 396 value of Y indicates a restriction on upgrading due to a lack of radio resources. A traffic channel availability flag 398 value of N indicates that the MS 310 is already operating at the maximum allowable number of channels. The maximum transfer rate flag indicates whether the currently allocated channel or channels are currently transmitting data at the maximum rate per channel.

Therefore, while Davidson does appear to describe a process of limiting the allocation of additional channels to a mobile station based on available resources, the reference does not teach or suggest selecting layered data for transmission based on the available resources, as claimed. Further, as conceded at p. 4 of the Office Action Hayama fails to disclose holding

layered data and a corresponding radio resource amount required to transmit the layered data, as claimed.

Therefore, Hayama, even if combined with Davidson, fails to teach or suggest “hold[ing] layered data and a corresponding radio resource amount *indicating at least one of a number of channels, a number of multiplexed codes or a transmission power required for transmitting the layered data*” and “*compar[ing] area resource information indicating at least one of an available number of channels, an available number of multiplexed codes or an available transmission power* for respective radio areas covered by base stations with the radio resource amount held in the holding unit *for each of a plurality of layers of the layered data,*” and “determin[ing], from layered data of a highest layer, at least one layered data of which the radio resource held in the holding unit satisfies the area resource information” as recited in amended independent Claim 1.

Accordingly, Applicants respectfully request that the rejection of Claim 1 (and the claims that depend therefrom) under 35 U.S.C. § 103 be withdrawn. For substantially similar reasons, it is also submitted that independent Claims 2, 6 and 12 (and the claims that depend therefrom) patentably define over Hayama and Davidson.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 1-2, 5-6, 9 and 12-14 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of the application is therefore requested.

Respectfully submitted,

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